

PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q63036

Hiroshi KAMIYA

Appln. No.: 09/782,017

Group Art Unit: 3627

Confirmation No.: 3808

Examiner: Maria Teresa T. THEIN

Filed: February 14, 2001

For: COMMODITY ORDER ISSUING AND ACCEPTING METHOD, SYSTEM THEREOF,
AND COMMODITY ORDER ACCEPTING APPARATUS

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellant respectfully submits
this Reply Brief in response to the Examiner's Answer dated December 10, 2008. Entry of this
Reply Brief is respectfully requested.

Table of Contents

STATUS OF CLAIMS	2
GROUND OF REJECTION TO BE REVIEWED ON APPEAL	3
ARGUMENT.....	4
CONCLUSION	6

STATUS OF CLAIMS

Claims 1-47 are all the claims pending in the present application and stand finally rejected.

Claims 1-47 are the subject of this appeal.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The issues on appeal are summarized as follows:

1. Whether claims 1, 4, 7, 10 and 13-42 are properly rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,578,014 to Murcko, Jr. (hereinafter “Murcko”) in view of U.S. Patent No. 4,926,325 to Benton et al. (hereinafter “Benton”).

2. Whether claims 2-3, 5-6, 8-9 and 11-12 are properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Murcko and Benton in view of U.S. Patent No. 6,314,406 to O’Hagan (hereinafter “O’Hagan”).

3. Whether claims 43-47 are properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Murcko and Benton in view of O’Hagan, and further in view of U.S. Patent No. 6,405,174 to Walker et al. (hereinafter “Walker”).

ARGUMENT

In addition to the arguments set for in the Appeal Brief filed September 15, 2008, Appellant responds to certain points made in the Examiner's Answer as follows.

Claims 1, 4, 7 and 37

As set forth in the Appeal Brief filed September 15, 2008, Appellant submits that Murcko and Benton do not disclose "a formula for calculating a payment price based on said order issuer's payment date." In the Examiner's Answer, the Examiner cites column 16, lines 58-61, column 20, lines 15-21, column 27, lines 49, 56, lines 50-67, column 28, lines 1-4, lines 7-13, lines 26-35 and lines 61-63 and column 29, lines 15-21 and lines 47-50 as disclosing these claimed features of claims 1, 4, 7 and 37.

In particular, the Examiner asserts that:

Such buyer specifying a cutoff percentile depending on the sellers providing items and in response to item requests; ... buyer setting the payment amount for an item, date and time appears, wherein the buyer has a predetermined period of time in which to make a payment for that date; a payment amount which stores the amount that the buyer decides to pay for the item and a payment date which stores the data on which the buyer assigns the payment amount for the item; if payment is late, the buyers pay an additional fee; and buyer can optionally provide guidance about what payment amount they might be willing to pay for the desired item are considered "wherein second electronic document comprises a formula for calculating a payment price based on said order issuer's payment date." See page 11, lines 1-13 of the Examiner's Answer.

Appellant respectfully disagrees with the Examiner's assertion for at least the following reasons.

For example, in column 27, lines 65-67, Murcko discloses that a buyer can provide guidance about what amount they might be willing to pay for the desired item. Further, in FIG. 18, Murcko discloses that the payment date will subsequently appear in block 1812 when the buyer sets the payment amount for an item and this payment date is set automatically (column 28, lines 26-30). Therefore, according to Murcko the payment amount for an item is decided by the buyer and does not disclose a formula for calculating the payment amount for the item. Moreover, the payment amount for the item in Murcko is decided independent of the payment date since the date appears after the payment amount for the item is decided by the buyer.

Additionally, Appellant respectfully submits that Murcko discloses that the buyer has a predetermined amount of time after the information is entered in which to assign the payment, and a predetermined amount of time in which to pay. Further, Murcko discloses that the buyers have to pay an additional fee for late payments. However, this does not teach or suggest a formula for calculating a payment price based on said order issuer's payment date. Specifically, according to Murcko, if the payment is late, the additional fee is added on to the payment amount set by the buyer for an item. Therefore, Murcko merely discloses a fee added to the set payment amount for an item decided by the user; which still fails to disclose the payment amount for the item (allegedly corresponding to the claimed payment price) based on said order issuer's payment date.

Claims 2 and 5

With regard to claims 2 and 5, Appellant submitted in the September 15, 2008 Appeal Brief that Murcko, Benton and O'Hagan do not disclose calculating a reduced price corresponding to said transaction condition and said order issuer's payment date on said order

accepting device. In response, the Examiner provides similar reasons as in her remarks for responding to the arguments regarding claim 1. Further, the Examiner asserts “that if payment is late, the buyer pays an additional fee, therefore if the buyer pays on or before the date, the buyer is getting reduced price, thus the buyer does not qualify to pay an additional fee are considered ‘calculating a reduced price corresponding to said transaction condition and said order issuer’s payment date on said order accepting device’”. Appellant respectfully disagrees with the Examiner for at least the following reasons.

Appellant respectfully submits that regardless of whether additional late fee is paid by the buyer or not, the payment amount for an item set by the user does not change. This payment amount for the item is not a reduced amount calculated based on the issuer’s payment date on an order accepting device.

CONCLUSION

For the above reasons as well as the reasons set forth in September 15, 2008 Appeal Brief, Appellant respectfully requests that the Board reverse the Examiner’s rejections of all claims 1-47 on Appeal. An early and favorable decision on the merits of this Appeal is respectfully requested.

Respectfully submitted,

/Ebenesar D. Thomas/

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

Ebenesar D. Thomas
Registration No. 62,499

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: February 10, 2009